IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 894 OF 2005
IN
APPEAL FROM ORDER STAMP NO.15325 OF 2005

1. The Municipal Corporation of Gr. Mumbai and anr. ..Appellants

Vs.

1. Shri Badelal Gupat and anr. ..Respondents

Mr. R.A. Malandkar for appellants.
Mr. J.B. Singh for Respondent No.1.

**CORAM: B.H. MARLAPALLE, J.**

**Date : October 17, 2005.**

**P.C.:**

1. Heard Mr. Malandkar the learned counsel for the appellants-Corporation. Appeal from Order under Stamp No.15325 of 2005 has been filed challenging the order dated 14/7/2004 passed by the learned Judge of the City Civil Court at Mumbai making Notice of Motion No.1113 of 2004 absolute in terms of the ad-interim order granted on 17/3/2004 and by the said order the Corporation is injuncted from uprooting the tree and transplanting somewhere else. The appeal has been filed belatedly and hence this application for condonation of delay.

2. As per the office report the appeal is beyond time by 93 days and the explanation furnished in para 3 of this application does not really make out a case for condoning the delay. In addition, the location of the suit tree has been demonstrated by the learned counsel for the respondent no.1 by placing before the court few photographs and it is clear that the distance between the trunk of the tree and the construction that has been put up recently by respondent no.2 is more than 10 ft. This distance shows that the tree was not required to be shifted from its existing place, at least on account of the construction undertaken by the respondent no.2. Thus, the notice issued by the Corporation for shifting the tree was uncalled for.

3. The application is rejected.

**(B.H. Marlapalle,J.)**